

1 GREGORY G. ISKANDER, Bar No. 200215
giskander@littler.com
2 Nicole L. Phillips, Bar No. 306686
nphillips@littler.com
3 LITTLER MENDELSON, P.C.
1255 Treat Boulevard, Suite 600
4 Walnut Creek, CA 94597
Telephone: 925.932.2468
5 Facsimile: 925.946.9809
Attorneys for Defendant
6 MYRIAD GENETICS, INC.

7
TIMOTHY ELDER, Bar No. 277152
8 telder@trelegal.com
ANNA R. LEVINE, Bar No. 227881
9 alevine@trelegal.com
TRE LEGAL PRACTICE
10 1155 Market Street, 10th FLOOR
San Francisco, CA 94103
11 Telephone: 415 873.9199
Facsimile: 415 952.9898
12 Attorneys for Plaintiff
RONIT MAZZONI

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 RONIT MAZZONI,
17 Plaintiff,
18 v.
19 MYRIAD GENETICS, INC.,
20 Defendant.

Case No. 5:19-cv-3884-NC

JOINT PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Additionally, this action is likely to involve sensitive, personal medical information, including regarding third parties. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and

1 serve the ends of justice, a protective order for such information is justified in this matter. It is the
 2 intent of the parties that information will not be designated as confidential for tactical reasons and
 3 that nothing be so designated without a good faith belief that it has been maintained in a confidential,
 4 non-public manner, and there is good cause why it should not be part of the public record of this
 5 case.

6 2. DEFINITIONS

7 2.1 Action: this pending federal lawsuit.

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
 9 information or items under this Order.

10 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is
 11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 12 Civil Procedure 26(c), and as specified above in the Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
 14 staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 16 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

17 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
 18 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 19 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 20 discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
 22 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 23 consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this Action. House
 25 Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
 27 entity not named as a Party to this action.

28 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action

1 but are retained to represent or advise a party to this Action and have appeared in this Action on
 2 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and
 3 includes support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors, employees,
 5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 7 Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 9 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 10 storing, or retrieving data in any form or medium) and their employees and subcontractors.

11 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
 12 “CONFIDENTIAL.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 14 Producing Party.

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 17 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 18 copies, excerpts summaries, or compilations of Protected Material; and (3) any testimony,
 19 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

20 Any use of Protected Material at trial shall be governed by the orders of the trial judge. This
 21 Order does not govern the use of Protected Material at trial.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 26 defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion
 27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the
 28 time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 Non-Party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. The
5 Designating Party must designate for protection only those parts of material, documents, items, or
6 oral or written communications that qualify so that other portions of the material, documents, items,
7 or communications for which protection is not warranted are not swept unjustifiably within the ambit
8 of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
11 encumber the case development process or to impose unnecessary expenses and burdens on other
12 parties) may expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
15 that it is withdrawing the inapplicable designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
22 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix, at a
23 minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
24 that contains protected material. If only a portion or portions of the material on a page qualifies for
25 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
26 appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection need not
28 designate them for protection until after the inspecting Party has indicated which documents it would

1 like copied and produced. During the inspection and before the designation, all of the material made
 2 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
 3 identified the documents it wants copied and produced, the Producing Party must determine which
 4 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
 5 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
 6 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
 7 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 8 making appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party, identify the Disclosure or
 10 Discovery Material on the record, before the close of the deposition all protected testimony.

11 (c) for information produced in some form other than documentary and for any other
 12 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 13 containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or
 14 portions of the information warrants protection, the Producing Party, to the extent practicable, shall
 15 identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 17 designate qualified information or items does not, standing alone, waive the Designating Party’s
 18 right to secure protection under this Order for such material. Upon timely correction of a
 19 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
 20 accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 23 confidentiality at any time that is consistent with the Court’s Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 25 process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on the
 27 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
 28 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to

sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and

1 expense of seeking protection in that court of its confidential material and nothing in these
 2 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to
 3 disobey a lawful directive from another court.

4 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
 5 THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 7 Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
 8 connection with this litigation is protected by the remedies and relief provided by this Order.
 9 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
 10 protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 12 Party's confidential information in its possession, and the Party is subject to an agreement with the
 13 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the
 15 information requested is subject to a confidentiality agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
 17 Action, the relevant discovery request(s), and a reasonably specific description of the information
 18 requested; and

19 (3) make the information requested available for inspection by the Non-Party, if
 20 requested.

21 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
 22 receiving the notice and accompanying information, the Receiving Party may produce the Non-
 23 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
 24 protective order, the Receiving Party shall not produce any information in its possession or control
 25 that is subject to the confidentiality agreement with the Non-Party before a determination by the
 26 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
 27 seeking protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 2 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 3 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 4 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 5 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 6 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 7 Be Bound” that is attached hereto as Exhibit A.

8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 9 PROTECTED MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 11 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
 12 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 13 modify whatever procedure may be established in an e-discovery order that provides for production
 14 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 15 parties reach an agreement on the effect of disclosure of a communication or information covered by
 16 the attorney-client privilege or work product protection, the parties may incorporate their agreement
 17 in the stipulated protective order submitted to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 20 its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 22 no Party waives any right it otherwise would have to object to disclosing or producing any
 23 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 24 Party waives any right to object on any ground to use in evidence of any of the material covered by
 25 this Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material
 27 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to
 28 a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to

1 file Protected Material under seal is denied by the court, then the Receiving Party may file the
 2 information in the public record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in paragraph 4, within days of a written
 5 request by the Designating Party, each Receiving Party must return all Protected Material to the
 6 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
 7 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
 8 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the
 9 Receiving Party must submit a written certification to the Producing Party (and, if not the same
 10 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
 11 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
 12 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
 13 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
 14 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
 16 work product, and consultant and expert work product, even if such materials contain Protected
 17 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 18 this Protective Order as set forth in Section 4 (DURATION).

19 14. Any violation of this Order may be punished by any and all appropriate measures
 20 including, without limitation, contempt proceedings and/or monetary sanctions.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 7, 2020

/s/ Nicole L. Phillips
GREGORY G. ISKANDER
NICOLE L. PHILLIPS
LITTLER MENDELSON, P.C.
Attorneys for Defendant
MYRIAD GENETICS INC.

DATED: January 7, 2020

/s/ Anna R. Levine
TIMOTHY ELDER
ANNA R. LEVINE
TRE LEGAL PRACTICE
Attorney for Plaintiff
RONIT MAZZONI

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: January 8, 2020

4819-5958-6480.1 099458.1005



EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name] of _____ [print or type full address], acknowledge under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of *Ronit Mazzoni v. Myriad Genetics, Inc., Case No. 19-CV-03884-NC*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

4820-3370-7184.1 099458.1005